IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1171 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JALABHAI DALSINGHBHAI DAHMA

Versus

STATE OF GUJARAT

MS KRISHNA U MISHRA for Petitioner No. 1
MR AMRISH K PANDYA for Petitioner No. 1
MS HARSHA DEVANI AGP for Respondent No. 1-3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 28/05/2003

ORAL JUDGEMENT

1. The petitioner-detenu has assailed the detention order passed by the respondent no.2 on 08-12-2002 with a view to preventing him from acting in any manner prejudicial to the maintenance of public order in the area pertaining to Surat City, and considering and treating him as "dangerous person" under Section 2(c), and in exercise of the powers conferred under Section 3(2) of the Gujarat Prevention of Anti-Social Activities, 1985 (PASA Act), which is under challenge in this writ petition under Article 226 of the Constitution of India on various grounds.

2. The main ground, out of several other grounds, is pertaining and referable to unexplained delay in passing

the detention order. The detention order came to be passed on 05-12-2002, and the last offence came to be registered on 11-08-2002. There were six offences against him, which are elaborately articulated and highlighted in the detention order. This means, evidently, there is a delay of three months and 22 days, which has not been explained. It is a settled proposition of law that unexplained or unaccounted period of delay in making or passing the order of detention from the last impugned act or violation of law, is fatal. This also speaks about non-application of mind. The ratio propounded by the Apex Court in Anand Prakash v. State of Uttar Pradesh reported in AIR 1990 SC 516 is squarely attracted to the facts of the present case as in that case it has been succinctly propounded that in absence of any satisfactory explanation for delay in passing the detention order, the detention order shall stand vitiated, as it could not be said to be a proximate cause necessitating the passing of order of detention under the PASA Act. Since this sole ground goes to the root of the matter, other grounds are not gone into. The petitioner therefore succeeds. The impugned order of detention is quashed and set aside, and the detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute without any order as to costs. Direct service is permitted.

(J.N. BHATT, ACTING C.J.)

[SNDEVU]

P.S.